

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

CRL.A.No. 134 of 2004(C)

AGAINST THE ORDER IN CRLP.38/2004 Dated 14/01/2004
CC.1485/2000 of JUDICIAL MAGISTRATE OF THE FIRST CLASS-II,
ERNAKULAM
.....

APPELLANT: PETITIONER/COMPLAINANT

JOSEPH LANGTON CORREYA,
S/O MANUEL CORREYA, UNDACHAMPARAMBIL HOUSE,
PACHALAM P.O.,KOCHI-12

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENTS: RESPONDENTS/STATE & ACCUSED

1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. ANCIL MENDEZ, RUBY NIVAS, S.R.M.ROAD,
PACHALAM,KOCHI-12

BY ADV. SRI.GEORGE THOMAS (MEVADA)
PUBLIC PROSECUTOR, SRI PUZHAKKARA MUHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 01/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.M.JAMES, J.

Crl.A No. 134 of 2004 (B)

Dated this the 1st day of March, 2007

J U D G M E N T

The complaint preferred by the complainant under Section 138 of the Negotiable Instruments Act was dismissed by the Judicial Magistrate of the First Class Court -II, Ernakulam, on the ground of the absence of the complainant and his counsel, when the case was taken up on 28/11/2003. Hence, this appeal is filed on obtaining leave, challenging the said order.

2. When the matter was taken up on 26/02/2007, there was no representation before this Court. Therefore, I have posted the case to today, for disposal. There is no representation today also. Hence, I perused the records. I have also gone through the appeal memorandum. It is stated at paragraph (5) of the appeal memorandum that the date was noted by the clerk of the advocate in the court below, due to an oversight, wrongly as 28/12/2003 instead of 28/11/2003. Therefore, there was no appearance on 28/11/2003.

3. I always hold the view that because of the lapse on the part of the advocate clerk or an inaction on the part of the advocate, there should not be any loss or sufferings to the litigant public. Therefore, instead of putting aside this matter, I dispose of this appeal on merit, considering the averments contained in the appeal memorandum.

4. Service is complete in respect of the second respondent-accused. But there is no representation. Therefore, I accept the plea of the appellant that he was prevented from appearing before the Magistrate court, on the date when the case was taken up, due to an inadvertent wrong noting of the date, by the clerk of the advocate. Hence, I am inclined to give an opportunity to the complainant-appellant, who filed this appeal, on obtaining leave, to raise his contentions before the Magistrate court.

5. In the result, this appeal is allowed. The impugned order dated 28/11/2003 is set aside. C.C.No.1485/2000 is restored to the file of Judicial Magistrate of the First Class Court-II, Ernakulam. The complainant shall appear before the court below on 02/04/2007.

As the second respondent-accused is not before this Court, despite the receipt of notice, the court below shall get his presence as per the law. The court below shall dispose of the matter at the earliest, in any case, within four months from the date of appearance/production of the accused, before the court below, according to the law.

(J.M.JAMES)
Judge

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